IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 1293 OF 2006

Su-Raj Diamonds(I) and Its Associates and/or Contracts Staff Association. ... Petitioners.

V/s.

Su-Raj Diamonds (India) Ltd. & Others. ... Respondents.

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Mr. Joy Deb Saha, Petitioner in-person.

Mr. J.P. Cama, Sr. Counsel with Mr. S.G. Dhulia with Mr. Amit Dhulia i/b. Mr. Sanjay Udeshi of M/s. Sanjay Udeshi & Co. for the Respondents.

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CORAM : DR. D.Y.CHANDRACHUD,J.

23RD JANUARY 2007.

P.C. :

1. The Industrial Court has, upon an order of remand that was passed by this court on 28th April 2005, dismissed the complaint of Unfair Labour Practices by the order that has been impugned in these proceedings.

2. The subject matter of challenge before the Industrial Court revolved around a closure that was effected in the Goregaon Unit of the First Respondent on 16th November 1997. The contention of the Petitioner was that Chapter VB of the Industrial Disputes Act, 1947 was attracted since during the material period of 12 Calender months, immediately preceding the date of closure, there were on an average more than 100 workmen engaged in the establishment. The submission in regard to the applicability of Chapter VB was based on two grounds : (1) The first was that there was functional integrality between the Goregaon Unit and the other establishments of the same employer; (2) The second ground was that independent of the question of functional integrality, more than 100 workmen were engaged at the Goregaon Unit in the preceding period of 12 months prior to the date of closure. The Industrial Court has held against the Petitioner on both the grounds.

3. At the hearing of this Petition, the Petitioner has been represented in-person by the President of the Union, Shri Joy Deb Saha. The President of the Union in the course of his submissions specifically stated that he seeks to press only the second of the aforesaid grounds of challenge in these proceedings, namely on the question as to whether more than 100 workmen were engaged in the Goregaon establishment of the First Respondent in the preceding period of 12 months prior to the date of the closure which took place in November 1999. The issue of functional integrality has therefore not been argued before this Court. Since the Petitioner has been represented in-person, in all fairness, it was necessary for the Court to draw the attention of the party to the consequence of a concession being made in oral arguments. That has been explained during the course of the hearing. Shri Saha, President of Union has, however, informed the Court that upon due deliberation he has confined the challenge only on the second ground as noted above. The issue of functional integrality has not been pressed.

4. The reasoning of the Industrial Court on the aspect of the matter which is now placed in question in this proceeding is confined to paragraphs 19 and 20 of the Judgment. The Goregaon establishment had two Sections viz. Section I and Section II. The Industrial Court notes that he Muster Rolls, Wage Registers and the entire Provident Fund record was produced before the Court for scrutiny. During the course of the submissions before this Court, in these proceedings, it has been stated that in pursuance to summons issued by the Industrial Court, a representative of the Office of the Provident Fund Commissioner produced the relevant documents. These documents were marked as Exhibit UA1. On the basis of the Provident Fund record, it has been urged on behalf of the Petitioner that for the period from April 1998 to March 1999, 107 workmen were engaged in Section I at Goregaon (Page 661-672 of compilation B) and during the period from April 1999 to March 2000, the total number of workmen in Section I was 83. The period to which these documents relates includes the 12 months prior to the date of

closure. In so far as Section II is concerned, the Muster Roll produced by the Management for January 1998 shows 130 workmen in Section II. 77 workmen had according to the Management, resigned which would leave a balance of 53 workmen. The submission, therefore, is that the total number of workmen in Sections I and II would be in excess of 100 which is the number of workmen required to attract the applicability of Chapter VB. The next part of the submission is that the Provident Fund record (Pages 628-639 of Compilation B) shows that upto March 1998, there were 227 workers at Goregaon. The muster for January 1998 shows 130 workmen in Section II. Hence, it has been urged that the balance of 107 workers would relate to Section I. The muster for Section I was, according to the Petitioner, produced in relation to 50 workers while there is no explanation in respect of the remaining 57 workers.

5. Finally, it has been submitted that there is intrinsic evidence about the lack of authenticity of the alleged letters of resignation produced by the management. A chart has been appended at page

41 of the Writ Petition. It has been submitted that the Management had initially produced photo-copies of the alleged letters of resignation. Subsequently, the Management placed reliance, after the order of remand, on the originals. While the **photo-copies** bear dates of resignation, the **originals** which were produced by the Management are undated. Hence, it was submitted that the Management has produced fabricated documents to advance its case that a body of workmen had resigned.

6. The Industrial Court has noted in paragraph 12 of its order that a written synopsis of arguments was tendered by the Petitioner which is referred to as Exhibit U-143. A copy of the said written submissions has been produced before this Court for perusal (Page 1420 at 1423 & 1424 of Compilation 'C'). From the synopsis it emerges at least prima facie, that relevant submissions were urged before the Industrial Court. There is merit in the submission urged on behalf of the Petitioner, that the Industrial Court has not considered material aspects of the evidence led and in particular, the

Court has not assessed the Provident Fund records. In paragraph 20 of the judgment, the Industrial Court notes that the Provident Fund documents would show that the strength of the workmen was below 100 during the entire period of 12 months. This, according to the Petitioner, is ex-facie in the teeth of the record of the Provident Fund Authorities.

7. In a matter such as the present it would not be proper and appropriate for this Court to enter upon issues of fact, if a proper factual determination is made by the Industrial Court, which is the fact finding authority, on a review of the entire evidence. However, in a situation where the Industrial Court has failed to consider material parts of the evidence, it would be appropriate for this Court to exercise its jurisdiction under Article 226 and to remand the matter back to the Industrial Court for a fresh determination on the question as to whether the requirements of Chapter VB are attracted. The learned Counsel for the management has agreed to this course of action, reserving to the management

the liberty to urge all appropriate submissions before the Industrial Court on remand. The Industrial Court is directed to reconsider the issue having regard particularly to the Provident Fund record that has been produced before the Court and to arrived at a factual determination after furnishing an opportunity of a hearing to both the parties. The rights and contentions of the parties on the merits of the question upon which an order of remand is being passed, are kept open for decision by the Industrial Court. Upon remand, the Industrial Court shall endeavour an expeditious disposal preferably by 30th April 2007. Parties shall appear before the Industrial Court for receiving directions on 29th January 2007. In order to facilitate a fresh decision on remand, the order of the Industrial Court dated 12th February 2006 is quashed and set aside.

8. In the circumstances of the case, there shall be no order as to costs.